



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/971,902	10/05/2001	Peter R. Oeltgen	ZYM/09US	4028
26875	7590	10/26/2004	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			HAMUD, FOZIA M	
			ART UNIT	PAPER NUMBER
			1647	

DATE MAILED: 10/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/971,902	Applicant(s) OELTGEN ET AL.	
	Examiner Fozia M Hamud	Art Unit 1647	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 9/23/04. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.


Claim(s) rejected: 1-12.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continuation of 3. Applicant's reply has overcome the following rejection(s): The rejection of claims 10-11 made under 35 U.S.C 112, first paragraph, for not enabling a method for treating a bacterial infection related hepatic injury in a mammal, said method comprising administering a an effective concentration of the peptide set forth in SEQ ID NO:1, is withdrawn in part. The Declaration filed by Dr. Peter Oeltgen demonstrates that the administration of SEQ ID NO:1 peptide, protected mice from hepatic injury induced by administering endotoxin and galactosamine. Dr. Oeltgen showed that ALT levels of Groups I and II, (control, and peptide + saline) was 84-138 IU/l and had normal hepatic function; Group III (endotoxin + galactosamine) had 2500-3500 IU/l and had 100% mortality; and Group IV (endotoxin + galactosamine + peptide) had ALT levels of 640, 837, 956 and 1028 IU/l and had 33.33% mortality. Therefore, Applicant demonstrates that the administration of SEQ ID NO:1 peptide decreases ALT levels and reduces mortality rate from endotoxin induced hepatic injury. However, Applicant has not shown that the administration of SEQ ID NO:1 peptide to a mammal has protective effect against hepatic injury induced by chemical toxin or by viral infection, or whether said peptide decreases a cytokine mediated hepatic injury.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant has not shown that the administration of SEQ ID NO:1 peptide to a mammal has protective effect against hepatic injury induced by chemical toxin or by viral infection, or whether said peptide decreases a cytokine mediated hepatic injury.


JANET ANDRES
PRIMARY EXAMINER